Neutral Citation No.: [2002] NIFam 26

Ref:	**GILC3587**

Delivered:	**30/1/02**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

_____

IN THE MATTER OF S (DISCHARGE OF CARE ORDER: FREEING FOR ADOPTION: ADMISSIBILITY OF HEARSAY RULE: DOMESTIC VIOLENCE)

GILLEN J

JUDGMENT

This case concerns a child S, born 29 June 1999. P1 is the mother of the child and P2 is the father of the child. They were married in June 2000. The child S is the subject of a Care Order granted on 8 December 1999 at Londonderry Family Proceedings Court. Their daughter C, born on 8 August 2000 has remained in their care subject to a Supervision Order which is now in force. The applicant is a Health & Social Services Trust which I do not propose to name and which I shall refer to as "the Trust".

The applications before this court are as follows:

1. An application by each parent to discharge the Care Order made in respect of S.

2. An application by each parent pursuant to Article 53(2) of the Children (Northern Ireland) Order 1995 (hereinafter called "the 1995 Order") seeking increased contact with S.

3. An application by the Trust pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 (hereinafter called "the 1987 Order") to free S for adoption.

BACKGROUND

The history of P1 and P2 prior to the birth of S is a bleak one with little in the nature of any uplifting threads. I shall deal with each of them in turn:

P2

(a) P2 came to the attention of the Children Services in Newry in early 1990s arising out of allegations that he had been violent and had abused alcohol whilst living in the homes of two families known to Children Services. He clearly has a long history of alcohol abuse and violence.

(b) On 24 October 1995 P2 assaulted the 16 year old son and the 11 year old daughter of the woman with whom he was then living. He was convicted of these assaults and was sentenced to three months' imprisonment suspended for two years on each count. Thereafter he has consistently minimised the nature of the assault on the children stating that he had to strike the 16 year old boy because he was going to steal his car and that he simply pushed the girl as he ran past her to confront the boy.

I have before me a report from a general practitioner who had examined the boy who had been the victim of the assault for which he was convicted. On examination of the boy there was:

> "(1) An area of redness and swelling with early bruising to the antero-medial aspect of the right shin.
>
> (2) Several irregular areas of redness to both sides of the neck – in the pattern of finger marks in a gripping action.
>
> (3) A linear area of mild bruising to the left side of the neck antero-laterally – corresponding to his clothing being gripped and pulled forcefully making contact with his skin there.
>
> These injuries are consistent with a blow such as a kick to his right shin, a gripping action with both hands applied to the neck, and clothing at the neck being gripped and pulled forcefully against the skin – as in a struggle."

In 1996 the boy had alleged that he had witnessed P2 throwing his mother down stairs, that on occasions when P2 attacked him he feared for his life, and that P2 had beaten him on several occasions. His mother, in precisely the same manner as P1 was to do, made extremely serious allegations of violence against P2 but subsequently withdrew them alleging that her allegations against P2 were untrue. P2 told NR, a social worker, that he had merely slapped the boy's face to recover his car keys – giving no explanation as to how the injuries I have outlined were sustained. So far as his assault on the female child was concerned, his only explanation to NR for the assault was that she was

hurt during the scuffle with the boy. The girl alleged that at the time he had punched her on the left arm. She told the Social Worker that sometime before that he had struck the boy on his bottom and her around the ear. At this time the mother made the allegations that he was regularly violent both physically and sexually to her and that he had beaten the children. These allegations she subsequently withdrew. As a result of these incidents, an emergency case conference was held on 24 November 1995 and that conference recommended that the children should not remain in the care of P2. It was agreed that the mother of the children would be offered the opportunity to either leave P2 that day and move to a residential unit with her children or be advised that the children would be removed to a place of safety. When she refused to separate herself from P2, the children were received into voluntary foster care on 24 November 1995. I have gone into some detail on these allegations because although they are based on hearsay evidence, I am satisfied that the circumstances that obtained at that stage, resulting in the children being taken into voluntary care, coupled with the medical evidence which I have seen and the subsequent conviction of P2, all serve to illustrate that this was a highly violent course of conduct engaged in by P2 which he has denied or diminished consistently throughout his interviews with professionals and indeed in evidence before me. It is chilling testimony to the violence of which P2 is capable.

(c) At a case conference on 24 November 1995 held by the Southern Health and Social Services Board, three children of the partner with whom he was then residing (Mrs McC) were placed on the Child Protection Register under the category of "Potential Physical Abuse". A case conference had recommended to Mrs McC that if she were to remain with P2 the children would be received into the care of the Board. P2 and Mrs McC parted in the spring of 1996 and it is alleged in the papers before me that Mrs McC at that stage said that she feared for her life.

(d) P2 then became involved with another woman, namely, Ms C and fathered two male children. A similar pattern developed in that relationship as before. Ms C made an allegation of domestic violence against P2 and of alcohol abuse by him. She applied to the court for a personal protection and exclusion order. In October 1997 P2 was admitted to the Mid-Ulster Hospital with alcohol related problems. The parties separated and during the course of 1998 P2 made numerous requests for contact with his children of that relationship. He had formed another relationship at this stage with P1. In April of 1998 interim contact orders were granted to P2 with weekly supervised contact in Maghera Day Centre. According to the evidence of the social workers, thirteen contacts were planned but P2 attended a total of five and cancelled the remaining eight due to alcohol related problems. He was admitted to Hollywell Hospital following a period

of binge drinking on two occasions during this period. At this time P2 contacted social services to advise that he no longer wanted contact with his sons. For a short time thereafter he resumed his relationship with Ms C but that seemed to terminate again in August 1998. In that month P2 contacted social services to advise that he had resumed his relationship with P1 and wanted no further contact with Ms C or the children of that union. He has had no contact with his children since that date.

(e) A social work report before me at Bundle 3 page 15 records "P2 has had four partners that Children's Services are aware of in the last nine years. Each of these women has made allegations that P2 was violent towards them." Ms Adock in a report of 23 August 2000 reports allegations against him in only three of these relationships but the difference is not significant.

(f) During these periods he failed to engage meaningfully with professionals such as the Magherafelt Family Centre or the Community Addiction Team.

(g) He has been abusing alcohol from an early age and has made a number of unsuccessful attempts to abstain. Until 1999, his longest period of abstinence had been 18 months.

P1

(a) P1 is the mother of eleven children in all. Eight were born to her between 1983 and 1995. In addition A, who is the subject of a freeing

order application by the Trust in a separate application before me and to which P1 has consented, was born 8 July 1997. S, as already outlined, was born 29 June 1999 and C born on 9 August 2000 as a result of the relationship with P2.

(b) Her relationship with her first husband S1 revealed a sorry tale of physical abuse of her by her husband over several years. Eventually P1 separated in September 1996 with S1 obtaining custody of three of the children and P1 retaining custody of the other five.

(c) It appears that P1 became depressed in December 1996 as a result of a further short-term relationship. She was admitted to Hollywell Hospital in December 1996 prior to her discharge in January 1997 with a diagnosis of "depressive adjustment reaction consequent upon her circumstances". S1 had returned to the family home during his wife's stay in hospital and assumed care responsibility for all eight children. During April 1997 she became reconciled with S1. She gave birth to the ninth child A on 8 July 1997. However it appears that she became separated from S1 again in October 1997, P1 remaining in the family home with six of the children, including A.

(d) Social services then became aware that P1 was in a relationship with P2 and she was strongly advised that in light of his previous convictions the children were not to have contact with P2. It has been a recurring theme in her life that P1 was unwilling to accept that P2's relationship could pose any risk to her children. By December 1998 P1 had

contacted S1 and requested that he would assume care responsibility for all the children given that she planned to move in with P2. The relevant Trust alleged that at this stage P1 refused to reconsider her decision to reside with P2. Once again she was putting her own needs above those of her children. She had no objections to A's removal from her care when this was discussed on 8 December 1997. In short here was a woman who had developed a pattern of rendering herself physically and emotionally unavailable to her children when the cost was to sacrifice her relationship with P2. It is alleged that P1 was encouraged to return to Cookstown to give thought to her decision and discuss future plans for the care of her nine children, but allegedly she refused to do this. In the absence of extended family support, A was placed with a foster carer on 8 December 1997 on a voluntary basis. Subsequently however during the course of late 1997 and January of 1998 she asserted that her relationship with P2 was terminated and she resumed custody of A together with five of her other children. However in late December 1997 P1 and P2 were admitted to Hollywell Hospital and A again was taken into voluntary care with S1 having full care and responsibility of their remaining eight children. It is alleged by a social worker that shortly thereafter P1 admitted that she had orchestrated her admission to Hollywell to be with P2 and planned to reside with him. Although she denied this to me in evidence I found her singularly unconvincing and I believe she did orchestrate this

entry. She has continued to reside with P2 ever since. This hospital admission is but one of a litany of examples of the lengths to which she will go to be with P2.

(f) On 11 February 1998 A was made subject of an interim care order. Thereafter until March 1998 she visited A on a fortnightly basis despite the fact that weekly visits had been arranged. This presented as another example of her lack of commitment to her children. Contact to P2 was refused.

(g) In May 1998 it is alleged by a social worker that P1 requested assistance to leave P2 advising that he had been drinking consistently since 1 May 1998. During this month P1 alleged that P2 had been verbally and physically abusive towards her. Needless to say her endeavour to separate from him soon dissipated and she again resumed her relationship. This case is seared with examples of this pattern.

(h) It is significant to note that she has had no direct contact with the eight children of her marriage with S1 since December 1997 other than that she has attended one contact visit with her children at Cookstown Family Centre. Since March 1998 she has not initiated any action as regards contact with these eight children and this has remained the case to this day.

(i) The allegations of domestic violence against P2 continued during 1998. Some examples will suffice. On 3 July 1998 A's foster parent revealed that P1 had told her that P2 had been physically abusive to her and

struck her on the head several times. Later P1 told a social worker that P2 had beaten her up, forced her to sit up all night and had "walloped her seven times on each side of the head". Notwithstanding this the social worker CB alleges that on 7 July 1998 P1 stated she wanted no further contact with A and that he should be adopted. On 5 August 1998 she told the same social worker that she had been very afraid of P2 and at times feared for her life. P1 said that she knew that it would be wrong for her child to be with her in his home, but that she had been under P2's influence but was unable to say otherwise.

(j) A was made subject to a care order on 18 August 1998. Social services had offered a wide-ranging package of assessment but P1 and P2 failed to engage meaningfully in any of the work. After the full care order was granted in respect of A, the long term care plan was put on hold for a period of three months. This delay was at the request of the guardian ad litem in order to offer P1 a further opportunity to engage in assessment to look at the possibility of her being able to care for A. In the event P1 choose not to avail of this possibility. The care plan for A was therefore changed from reunification to permanence with a view to adoption. An unopposed application is currently before me to free this child for adoption.

(k) Ms C advised Child Services on 2 September 1998 that P1 was in hospital having jumped out of an upstairs bedroom window. She alleged that P2 had refused to let her come downstairs. Ms C also

alleged that P2 had been physically violent to P1 prior to this incident. P1 was in hospital for treatment of fractures to her heels and ankles sustained during the fall. Once again P1 denied this in her evidence before me insisting that it was only his drinking that concerned her and caused her to jump from the window. I watched her carefully during this denial and I was satisfied that she was being less than frank. She was clearly unwilling to admit to the extent of P2's violent bent, a pattern evident throughout her evidence.

Prior to S's birth, in light of the history described above, the local Children's Services staff were concerned for the future of S upon her birth and on 27 May 1999 a decision was taken to place the child on the Child Protection Register at birth. The child was born on 29 June 1999 and on 30 June 1999 the relevant Trust obtained an emergency protection order in light of concerns that P2 may have attempted to remove S from the hospital.

During the course of May and June 1999, P1 and P2 underwent assessment at the Family Centre work of the Trust. The report of those sessions, six in all, was found in my papers at bundle 3 page 23. Certain relevant and revealing matters emerged;

(a) P1 told a social worker that she had no understanding of what concerns Child Services had about her. Following the thread of her earlier behaviour she would not accept their concerns about P2's history of alcohol and violence and she denied that P2 had ever been

violent towards her or that she had ever made any such statement to previous social workers. I fear this is but one more illustration of this woman's domination by P2 and her inability to crystallise the dangers that are found in their relationship.

(b) When the social worker attempted to discuss the eight children that she had not seen in over eighteen months, P1 could only say that she saw A every six weeks.

(c) P1 was not prepared to discuss or address any of the Child Service concerns. It is highly significant that when the social worker asked P1 if she would avail of an opportunity to keep this child (S) and live apart from P2, P1 answered that she would "want to stay with [P2] and hope to have the baby". It is chillingly recorded in that note "It is of grave concern that the social worker has to note that at no time during her contact with P1 did she show any emotion or feeling about the fact that her children are traumatised by her loss or want to see them. P1 remained cold, detached and aloof while discussing all the above very serious and emotive issues". I believe that at this stage in her life her sole priority was the relationship with P2 and she was prepared to sacrifice the needs of her children to preserve it. I am not satisfied that this all consuming desire to please P2 is yet spent.

During the course of these sessions P2 was asked about the fact that his last four partners since 1990 had all made allegations of domestic violence against him. He asserted then as he did before me, that they

were all telling lies. He told the social worker that "as a Christian and with my hand on my heart, I have never assaulted anyone (man, woman or child)". His abject denial of violence, even in the face of overwhelming evidence such as his convictions on a plea of guilty to the assault of two children, is a recurring theme and one that I have found profoundly disturbing. He admitted however that he had several admissions to Gransha Hospital because of his alcohol problem, depression and nerves. He had started self-harming in his early 20s. This however had ceased 4-5 years ago according to him. In the course of these assessments, it was noted that P1 always looked to P2 for her answers. Before me he admitted that he had "pushed and shoved" these women repeating this mantra whenever confronted with the contrary suggestion. I must say that his demeanour when asserting these denials was conspicuously unimpressive and I formed a clear impression he was being knowingly untruthful.

On the basis of these investigations, the Trust concluded that if S were to return home with P1 and P2 she would be at risk of significant harm and accordingly the Trust sought and obtained a care order in relation to S on 8 December 1999.

The care plan prior to the date of this care order had been that no decision was to be made as to the return of S to her parents care until assessments had been completed and the outcome indicated a return home was in S's best interests. Three areas of concern to be addressed

in the case of P2 included domestic violence, conviction for a physical assault upon children and allegations of sexual abuse of children. In the case of P1, a programme of work with her was to run parallel with P2 incorporating attitudes and beliefs about domestic violence, attitudes and beliefs about child sexual abuse, attitudes and beliefs about physical abuse of children, her ability to protect her child from the above, her ability to act as an independent parent, her ability to cope with the demands of parenting and her ability to offer consistent and good enough emotional nurturing to a child. To this end during the course of 1999 a number of assessments were carried out. Assessments were sought from hospital midwifery, health visitors, police, and social workers involved with P1 particularly Ms Cassidy and Mr Robinson. Assessments were also sought from Northlands dealing with the alcohol abuse of P2, the Community Addiction Team and from Dr Bownes.

These assessments provided some positive feedback to the Trust in relation to the parents' progress. A document prepared by Ms McM, social worker, recorded, inter alia:

> "16.8.99 Verbal feedback from Northlands Centre – overall positive regarding the genuine nature of P2's intention/desire to remain sober. Main concern noted is the potential of aggression if P2 were to drink alcohol again in the future. Written feedback to be forwarded.
>
> 16.8.99 Verbal feedback from Dr Bownes – 'Generally favourable' outcome in context of the positive situation observed at present with both parents while

> P2 remains sober. The main concern in relation to the likelihood of aggression if P2 begins to drink at any point in the future. Written feedback to be forwarded."

A clear set back occurred on 26 November 1999 when P1 and P2 admitted to two social workers that on 26 September 1999 P2 had consumed alcohol some 7/8 weeks previously. His account of what happened is contained at bundle 9 in a memorandum of 26 November 1999 of the two social workers. It appears as follows:

> "On Sunday 26 September 1999 I was feeling rotten, I can't make up any excuses, I felt I was not good. I felt that I was no good to P1. I was not good to my daughter; I was no good to myself. I felt that social services saw me that way but I do not blame social services. I took the action myself and I am making no excuses. I went out and bought a half bottle of vodka and six cans of Harp. I had no drink in town, it was Sunday and I was not in a public house but in an off-licence and I felt bad, that I was just no good and that's just the way I felt. I came home with it, and it's the first time I can ever remember it, there were no rows or arguments between myself and P1, the only time I can remember that happening. P1 was just on the phone straight away. She said 'I'm having none of the it' and 'I'll not take any crap'. P1 knew there was no way that it would finish, that it would be me for 2, 3 or 4 days and she just lifted phone William and Margaret came round and got her and took her to their home. I wasn't looking at it anyway except that it was so bad and I was so bad and I have been told all them things over a wean of years. Had a few drinks and then William and Margaret phoned me later on the day and came round and I had stopped drinking by then and I threw out what was left. P1 came round about 9.00 when she had spoken to me on the phone and she knew I was not drunk. William phoned me later about 11.30 pm and talked until the early hours of the morning and was there for me. I

> made the decision to tell, I was the one at fault and things have started going well with P1 and I didn't want it to start and then 3 or 4 months down the line somebody to find out and me not to have said. It was a one off in that I have taken drink and then stopped. That has never happened in my life before. I threw out what I hadn't drunk and I was helped and not left on my own and I am still getting help. When I took the drink I had no cravings for drink where I used to have before when I always craved drink. It was just all that was going on in my head."

It is highly significant that this report makes no reference to domestic violence or to the visit during the incident of a pastor from his church. This was the extent of the information conveyed by P1 and P2 about this incident. The result was that the care plan underwent amendment with P1 and P2 undertaking to engage in work related to alcohol use at an approved alcohol programme and P2 volunteered to provide blood alcohol evidence to the Trust on a frequency to be determined by the Trust. The Trust decided to place S with carers approved to care for her on a permanent basis so that if the parents failed in their assessment the disruption would be minimal to S and the concurrent permanence plan was to be put in place. It is important to appreciate that at this stage the Trust still contemplated rehabilitation of S with P1 and P2 as an option if other work was successfully carried out, albeit, concurrent planning for permanency through adoption was also being contemplated.

The evidence before me was that the Trust thinking underwent a fundamental reassessment in light of further information that became

available from a Pastor and others in the church which P1 and P2 had attended. This evidence appeared in bundle 9 of the papers before me. On 28 March 2000 Ms L A, a Social Worker, met with Mr S, a former Pastor to the couple. Mr S indicated that he had become aware of P2's alcohol lapse in September 1999 when P2 himself telephoned Mr S at approximately 8.00am on a Sunday morning. The statement recorded goes on to state:

> "He immediately went to the couple's home and found P2 in a very intoxicated stated. P1 disclosed that the previous day P2 had attempted to choke her. P1 was going to leave the house with Mr S but then changed her mind. Mr S stated that P1 later went with Mr P3. Mr S stated at this point he felt contact with the couple was no longer appropriate to continue with."

The Social Workers then spoke on the same date to P3 a member of the church and his sister M. P3 informed the Social Worker that Mr S had contacted him regarding P2's alcohol lapse. His statement goes on to record:

> "He went to the couple's home in the afternoon arriving to find P2 very drunk and verbally aggressive towards himself and P1. P3 stated that P1 told P2 she was going to leave him and P2 replied `you're not'. After a short period P3 took P1 to Mr S's house where she remained for a few hours. P3 returned with P1 to the couple's home later that evening and P2 appeared sober and regretful about what had happened."

On 11 April 2000 LA and RM, Social Workers, again contacted Mr S and his wife to clarify the situation. Mr and Mrs S revealed that P1 and P2 had become regular visitors to the S family home, that they had

taken individual testimonies to "God" and at that stage their relationship appeared to be absent of any domestic violence or drinking. When P1 became pregnant with S, the couple appeared to continue to devote their lives to God. S stated "they both definitely appear to be making an effort." Returning to the incident above depicted the statement records:

> "Contact continued with P1 and P2 and on a Sunday morning approximately August/September at 8.00am S received a telephone call from P2 wanting S to see him. During the conversation P2 stated "I blew it, can you come and see me". S immediately went and on arrival to the house observed that P2 was very drunk. He informed S that he had been drinking from the night before. S enquired from the couple why hadn't P2 contacted him on the Saturday and P1 stated she had wanted him to but P2 would not and in turn would not allow P1 to ring. S left shortly afterwards having asked P1 to go with him but she refused. P2 was verbally aggressive when S would not drive him into town for more drink. S then stated that P3 collected P1 later on and called to their house but they were not in. They then went to S's daughter's house in which P1 who was very distressed disclosed that she had not been able to sleep all night and that she was thinking of leaving him. P1 also complained of her neck and throat being sore, but no visible marks were present. Mrs S stated that she felt at this point that P1 had made a definite decision but shortly afterwards P2 telephoned and P1 decided to return stating that P2 was very sorry for what he done. Later on on Sunday evening, S visited the couple who disclosed that P2 had attempted to choke P1 and had pushed her down on the floor. During these incidents of domestic violence P2 had been sober on the Saturday and had been wanting P1 to accompany him to the pub but she did not want to go. P1 disclosed that she had no choice but to

> eventually give in and go to a pub in Garvagh who had telephoned for a taxi."

At this meeting Mr S informed the Social Workers that he no longer felt comfortable in maintaining any links with P2 because he was physically violent and could not make alcohol an excuse any longer.

When the social workers confronted P1 and P2 with these allegations by Mr S, they denied the veracity of the charges. In a report dated 11 May 2000 RM the Social Worker records their reaction as follows:

> "P1 and P2 denied the veracity of this, claiming that due to a dispute, Mr S was making up lies in order to discredit them. It was made clear that the Trust had contacted S, rather than the other way round. P2 revealed he had fallen out with S because had purchased a car to be used for the ministry and subsequently sold it making a £1600 profit. Although S had bought the car with his own money, P2 felt that profits should go to the church. There is also a dispute in relation to S's son-in-law whom P2 feels belongs to a sectarian flute band and therefore should not be a member of the church. Eventually, after some confusion relating to events on the day in question, the following details were relayed. P2 started drinking on the Sunday morning, having purchased drink in an off-licence in Maghera. Both are adamant no drink was consumed the previous night nor did any argument occur nor a trip to a pub in Garvagh. P1 rang S on Sunday morning, asking him to collect P2's car keys so he could not drive in an intoxicated state. She felt she could not hide them herself because P2 would find them. Originally P1 denied ringing S and P2 claimed to have done so. P1 denies being afraid of P2 at any time and also refutes telling S about the alleged domestic violence. S came round and they left. P1 then allegedly rang P3 who collected her and took her to S's daughter's house as S was not in."

On 28 April 2000 Social Workers again interviewed Mr S and Mrs S and the report records his account as follows:

> "S states that he did receive telephone contact from P2 on Saturday morning at approximately 8.00am. S immediately went to the couple's house and arrived at approximately 8.30am. S stays until approximately 1.45pm. During this time P2 disclosed that he had attempted to choke P1 and had pushed her down on the floor on the Saturday. S states Mrs S and himself took P1 home at approximately 10.30pm. On Sunday evening P2 appeared to be very remorseful for what had happened and further discussion took place re events of Saturday. Social Worker enquired what approximate date the couple left S's ministry – the couple stated it was approximately end of August 1999. Social Worker informed them that P2's reason for leaving the church in relation to S having purchased a car. S explained that in all he only made £350 on the car and that missionaries who came from Belfast to look at the car felt the car was too old. This was the reason they decided not to purchase the car. Social Worker asked the couple at any time did they witness any domestic violence occurring between P1 and P2. Both stated that they had not. Social Worker informed S that P2 claimed that he been physically threatened by S. Social Worker explained what P2 had said. S denies that any such alleged incident took place."

This event in September 1999 when P2 had consumed excessive alcohol is clearly a matter of great controversy and of no little moment. If the Trust are correct, there is not only an abuse of alcohol by P2, but an outburst of domestic violence on a highly significant scale at a time when P2 was sober on the Saturday albeit that the quarrel arose because he wanted alcohol. It would betray an orchestrated arrangement by both P1 and P2 to go to great lengths to conceal this violence. P1 and P2 allege that S is fabricating the

violent aspect of the story for the reasons mentioned above. I consider the hearsay evidence of S to be admissible (and I shall deal with the Children (Admissibility of Hearsay Evidence) Order (Northern Ireland) 1996 in some detail later in this judgment). I do realise that it has some frailties in that S could have come to give evidence before me and there were some conflicts in the two accounts that he gave of the one incident. However I did have the benefit of seeing the allegations put to P1 and P2 and I found their rebuttal of his allegations to be wholly unconvincing. I simply did not believe them. Their demeanour was extremely uncomfortable and shifty when dealing with these allegations. Moreover it is highly significant that despite their knowledge that S had made these allegations (and their assertion to Social Workers on 19 April 2000 that he had fabricated these facts), there was unchallenged evidence that P1 and P2 made contact with S on 22 April 2000 ie three days after they alleged to Social Workers that he had fabricated allegations of domestic violence against them. P2 accepted S's account to Social Workers that P2 had contacted him to come to his house to say prayers for his wife. During this visit the couple disclosed to him that they were not getting S back. In evidence before me P2 completely failed to reconcile this visit with the earlier allegations which he had made. I simply do not believe that if P1 and P2 genuinely felt that S had fabricated evidence of domestic violence against them to their detriment, they would have countenanced for one moment the prospect of voluntarily contacting S to ask him to say prayers for P1 or that they would have discussed the question of getting the child S

back. I think this is clear evidence that they made up allegations against S and is a pointer to where the truth lies. Moreover I do not believe that S had any motivation to conceal or misinterpret these matters and I dismiss the car theory as a figment of P1's and P2's imagination. It is very important to note that S had not sought out the Social Workers but had been contacted by them as a result of information they had received. If S had really been trying to damage P1 and P2 he would have sought out the Social Workers to disclose this information and in any event could have made additional or even more serious allegations. I am satisfied therefore that these allegations are true and that not only did P2 engage in excessive abuse of alcohol on this occasion, but that he was violent towards P1. Their denials even to this day not only illustrate the damage they recognised this would do to their case, but they fill me with concern as to the prospect of P1 ever being prepared to disclose future attacks on her or the children should they occur.

In this context it is important to appreciate that P1 and P2 had woven a web of deceit about this incident in September concealing it from Dr Bownes, a number of social workers including Ms C and NR an Assistant Principal Social Worker employed by the Trust who has worked with P2 between October 1999 and March 2000. They were clearly masters of deceit lulling the Social Service Workers into the belief that all was well. P2 admitted in the witness box that he had formed the impression that POK a Social Worker had known about the incident and I believe that that is the only reason why either P1 or P2 revealed that which they did to the two Social Workers in November

1999. Had they not felt that the matter was already in the Social Worker arena I have no doubt that neither of them would have exposed P2's gross misbehaviour to any degree at all.

The level of concealment that I find to be evident in this incident I believe mirrors the level of concealment that sears the evidence of both of them with regard to domestic violence. Although the accounts which I have mentioned above from P2's former partners are also hearsay evidence I am satisfied that it should be admitted under the Children (Admissibility of Hearsay Evidence) Order (Northern Ireland) 1996. All of this evidence is in my opinion clearly relevant to the upbringing, maintenance and welfare of this child because of the importance of domestic violence in any child's life. Whilst in theory it may have been reasonable and practicable for the maker of these statements to come to court, the reality is that they would be reluctant to involve themselves again with this man in any form. The evidence of his violence comes from disparate sources and I saw absolutely no evidence of any collusion between these women at the time they made their separate allegations of domestic violence against P2 to social workers. It all fits a pattern of violent behaviour of which his convictions form a part. I reject entirely P2's assertion that he merely "pushed or shoved" these women although of course even that in itself would be totally unacceptable.

It is against this background that I have viewed P1's denials to me that she ever alleged to Social Workers that P2 had been violent to her other than to "push and shove her" as admitted by P2. As I watched P1 give evidence

about these matters I was completely convinced that she was being untruthful to me and was once again attempting to shield P2 from the consequences of his violent behaviour. A few instances will suffice:

a. At booklet 3 page 17 the report of the Social Workers CW and MH records:

> "During May 1998 P1 had made the following allegations:
>
> > `P1 confirms that P2 had been verbally and physically abusive towards her although she added she felt able to manage this.'
>
> On 3 July 1998 P1 told A's foster parent that P2 had been physically abusive to herself and had struck her on the head several times. Later P1 told CB, Social Worker, that P2 had beaten her up, forced her to sit up all night and had `walloped her seven times on each side of the head'. The Social Worker noted that P1 was anxious about this information being shared with P2."

On 5 August 1998 whilst residing at a hostel, P1 told CB, Social Worker, that she had been very afraid of P2 and at times feared for her life. P1 also said that she knew it would be wrong for her child to be with her in his home but that she had been under P2's influence but unable to say otherwise.

These are but examples of the incidences of violence which P1 had disclosed to Social Workers but which she steadfastly denied ever having said in evidence before me. She went so far as to allege that the Social Workers were fabricating the evidence against her. I reject this entirely and I am satisfied that even at the stage that she was giving evidence before me, this woman was completely under the control and domination of P2 who had

clearly prevailed on her to lie in order to protect him from the consequences of his previous violent behaviour. As I will mention subsequently in this judgment, it was unhappily all too clear to me that neither of these parties was prepared to face up to the full extent and consequences of the domestic violence. Instead they were both prepared to hide behind a veil of denial even in the face of overwhelming evidence. As a matter of pure fact, I found this profoundly disturbing and it served to undermine very considerably any faith I had in the truth of what they were saying to me or in their assertions that they recognised the danger of domestic violence. I recognise only too well that as Dr Connolly indicated to me it is very common in individuals with acute dependence to deny the full extent of the adverse consequences of drink. Denial is a complex issue and very often as NR said it is difficult to look at oneself in the mirror. The crucial issue is that is was made perfectly clear to both P1 and P2 that this court regarded their truthfulness on this matter as being very significant and that these denials were maintained in the face of strong assertions by both that they were being frank. I am satisfied that their denials of this violence betray a fundamental failure to recognise the significance or importance of domestic violence in the context of children and, equally importantly, a failure to evince any intention to desist from toleration of such future acts. Whilst there is no evidence that P2 has abused alcohol since the incident in September 1999, I therefore remain unpersuaded that he has faced up to the consequences of his past behaviour or enjoys a realisation of the harm to S that a repetition of such behaviour could occasion. Equally, I

am persuaded that he is by far the more dominant of the two and that P1 is completely under his control. Sadly I have concluded she is very unlikely to leave him much less report him to the social workers in the event of a repetition of his alcohol abuse or domestic violence.

This history of maladaptive behaviour has been accompanied by inconsistency in any endeavour to change. Again some short instances will suffice to illustrate this.

It is clear from the very helpful summary of Margaret Adock in bundle 2 at pages 30 and 30 that P1 and P2 evinced lack of cooperation with attempts to help them proffered by Family Centre, Community Addiction and other assessment professionals in 1998 in an attempt to rehabilitate them with A. Whilst P2 denied this in the witness box, the Guardian ad litem gave evidence that when interviewed on 12 March 1998 P2 told her that he had taken his last alcoholic drink at the weekend 7/8 March 1998, that he had begun to attend Christian meeting and was "saved" on the night of 8 March 1998. I believe the account of this interview given by the Guardian ad litem. The Guardian had interviewed Mr E, a retired NSPCC social worker, probation officer who worked as a volunteer with the "Stauros" Foundation which is a Christian organisation seeking to offer support and counselling to those suffering from addiction. Mr E was counselling P2 at that time. Wisely at that stage Mr E's view was that a long period of assessment was necessary before the child A could be returned to P1 and P2. However these endeavours did not last very long because when the Guardian interviewed P1 on 9 June 1998, she

confirmed she had left P2 on 5 May 1998 due to his continued drinking. On that occasion P2 confirmed he had been on a "binge" as a result of which he had been admitted to hospital on 8 May 1998. The pattern continued into 1999. In August 1999 P2 told Dr Bownes that he had decided to make a sustained effort to address his alcohol problem for 12 months. He said "The Lord came into my life and helped me and delivered me from my alcoholism." Within one month he was back abusing alcohol. The Guardian ad litem records interviewing P1 and P2 on 23 September 1999 during the course of which P2 was keen to point out that he was now a sober alcoholic, that he had now been sober for a substantial period of time and he believed that this period of sobriety would continue long-term because of his changed attitude to life. He stated his belief that this change stemmed from his recently found faith and that the support and guidance he received from fellow church members would sustain him in his sobriety. He was of the view that no other strategies were really necessary to minimise the chances of relapse. P1 confirmed that she believed P2 was a changed person and they were happy in their relationship. Of key importance is the fact that the Guardian raised concerns with her about her potential ability to protect S should P2 return to his previous pattern of drinking. She stated that she would be aware in advance if P2 was going to drink and in the event, would take immediate steps to remove herself and S from the home. At that stage presciently the Guardian recorded:

> "Whilst not trying to undermine this position, I do have concerns that during the course of many

> years P2 has abstained from alcohol for periods before returning to alcohol abuse. Although P2 has been sober for approximately one year, given the prolonged history of alcohol misuse and associated destructive behaviour … in my view it would be important for some cognitive/behavioural therapy to have been undertaken before a comprehensive risk assessment could be successfully completed."

Literally within days of this interview P2 resumed his drinking habits and I believe committed acts of domestic violence against P1. It is highly significant as I have already recorded that the two of them then proceeded to conceal this from a number of professionals including social workers, the Guardian ad litem, and others. This whole scenario, embracing protestations of permanent change, carries a jolting resonance to the evidence now before me.

P1 has also been similarly inconstant in dealing with P2. Time and time again she has left him only to return often at the cost of sacrificing her relationship with her various children. A further interview between the Guardian ad litem and P1 on 5 August 1998 suffices to illustrate this. The former records at book 2 page 62:

> "I interviewed P1 in the hostel on 5 August 1998 and she confirmed that P2 had continued to drink heavily throughout the past weeks. She reported that P2 would start a binge of drinking each Wednesday when he collected his money and this would continue through three or four days. He would consume several bottles of vodka during this process. During his drinking he would be aggressive and violent. He would not go to bed at night and would not allow her to do either. P1 cited one incident when she had gone to bed and he had followed her and dragged her downstairs."

I pause here to observe that once again in her evidence before me P1 denied that she had ever said this or that this incident had happened. I reject her denial and I believe the Guardian who gave her evidence in a most impressive manner. The report goes on:

> "She cited other instances of physical abuse during the past few weeks and also of P2 trying to get anti-depressant medication from a GP in the health centre in Portrush while he was drinking on a two-day holiday there. P1 stated that she had been very afraid of P2 and at times she had feared for her life."
>
> (Once again P1 denied that she had ever feared for her life in her evidence before me).
>
> "She further stated that she had known it would be wrong for her child to be with her in the house but she had been under his influence and unable to say otherwise. She also alleged that P2 had refused to let her visit A during the past weeks. She reported that when she recently separated from P2 her solicitor had contacted the RUC who had then assisted her in removing clothes etc from his house. P1 informed me that it was her firm intention to remain separated from P2 and to work towards getting her child A returned to her care. She is currently living in a hostel for single people but has applied to the Northern Ireland Housing Executive for suitable accommodation."

Needless to say within a short period she had returned and resumed her relationship with P2. Chillingly in another interview in March 1998, in relation to the child A, the Guardian had recorded an interview with her as follows:

> "When I interviewed P1 on 12 March 1998 she confirmed that the main priority in her life at present is her relationship with P2. She stated she would very much like A to be returned to her care

> but should the court deem that P2 poses a risk of significant harm to A her choice would be to remain with P2. P1 stated that she has never been happier than during the past few months. Although she is aware of P2's history she does not accept that A would be at any risk of physical harm if in their joint care".

I have to record that as I watched P1 carefully giving her evidence, in relation to P2 I was not persuaded that she had changed from this view and I am still of the firm conviction that she neither recognises the risk that P2 presents to children nor has a settled intention to leave him should he regress to his former behaviour. The unhappy truth is that in so doing she prioritises her own needs above those of her children. I believe that the only way that she can justify this to herself is by denying that she has ever said he was violent to her and by refusing to accept that her relationship with him endangers her children at times.

I have also concluded from the past history and from watching him giving evidence that P2 is a manipulative and persuasive man who is prepared to tailor his evidence according to what he deems to be his own best interest. He deems it in his best interest never to admit that he had engaged in violence other than minor pushing notwithstanding the wealth of evidence to the contrary and he deems it in his best interest to have prevailed upon P1 to follow the line that he has adopted. The history of children being removed from his care due to his association with their mother reflects that he has ruthlessly put his own interests first and sacrifices others to satisfy his own needs. He is single-minded and determined when abandoning those who do

not appear to be serving his own purposes. The evidence throws up a number of examples:

a. He had availed of the help of Mr E from Stauros during the course of 1998. However Mr E had been closely involved in the regression to drink in May 1998 and had assisted in removing P1 from the house in the wake of a drunken outburst by P2. Mr E had formed the opinion that P2 was not ready to give up drinking and that in these circumstances the child A would be at risk in the environment thus created. When the Guardian ad litem reported the comments made by Mr E, P2 stated that from now on the Guardian no longer had permission to speak to Mr E concerning his circumstances. He further stated that he intended breaking off his association with Mr E. He denied in the witness box ever having said this to the Guardian ad litem but I regarded this as yet another example of his unswerving propensity to deny the truth when it conflicts with his objective. The fact of the matter is that he was perfectly prepared to use Mr E whilst he was of benefit to him, but abandoned him once that use ceased. I saw a direct parallel situation in the case of NR an assistant principal social worker employed by the Trust. This man commenced work with P2 in October 1999 until March 2000 and again between October 2000 and March 2001. It is clear to me that P2 had concealed from NR the extent of his previous history initially denying any domestic violence towards any partner or any history of verbal, psychological, physical

or sexual violence. He had sought to stress that even when heavily intoxicated he did not scare or hit partners. As time went on he did make some acknowledgement and admissions of his past violence. NR spoke positively about him asserting that he had no indication of any violent episodes in recent months given the high level of Social Service contact. He felt that P2 had perhaps developed a greater understanding of the concept of domestic violence than hitherto had been the case. I confess I have found that difficult to reconcile with his denials of involvement. However in and around February/March 2001, P2 ceased his work with NR once it became clear that NR's work was confined to addressing domestic violence and that he would not act as an advocate for P2 in the present proceedings. Whilst it is right to say that NR did not think it had been a ploy all along to engage him he recognised it was impossible to say this with any certainty. I am not sure that NR was aware of the similar pattern of behaviour to which I have concluded P2 is given. Thirdly, I heard evidence from BMcK who was called on behalf of P1 and P2. She was an aunt of P2 and had known him for a very long time. Her view was that he had changed a lot over the past few years and she was put forward as someone who would report any resumption of drinking to the appropriate authorities. However it was clear that neither P1 nor P2 had apprised her of the drinking episode in September 1999. It obviously did not serve his purpose, whatever that was, to let her know about this since

she has been kept in the dark despite the fact that she is meant to operate as a further protection for the child. I have already adverted to the delay in informing anyone about the incident of September 1999 by either P1 or P2 and to the fact that they deliberately concealed this incident until I consider they felt they had no choice. They were both prepared to use these professionals to bolster their position even at the cost of misleading them about the progress of one of the core issues.

It is the evidence of this pattern of behaviour that persuades me that whilst Mr Morgan, a person from Alcoholics Anonymous who gave evidence before me, has been and will continue to be a source of assistance to P2, there is a real danger (and in my view a likelihood) that he too will be jettisoned should he cease to serve the purpose which P2 conceives him to have. Mr Morgan asserted that in light of the number of AA meetings that P2 has attended and the number of times that he has personally met with him, he was satisfied he was not being manipulated. I have no doubt that Mr Morgan is a genuine man doing his best to help P2, but his confidence in P2 did not serve to rid me of the firm belief that I had formed having listened to P2 that he is prepared to use people so long as they serve his purpose but that he would readily terminate that commitment should Mr Morgan seek to frustrate his settled plan. To some extent he has sedated Mr Morgan with misleading information in that he has kept from him any admission that he did other than push his previous partners in the heat of the moment and he denied that he had been violent at all to his present wife. I have rejected these

assertions and I see it as yet another example of P2's selective relationship with the truth where he thinks it will serve his own ends.

Sadly it is my conclusion that this also all serves to demonstrate an alarming lack of insight into the needs of this child and the need to confront their own problems. If there is to be some measure of closure of the past, both P1 and P2 need to escape from the basic denial of the past that engulfs them and recognise the problems they have created. This thread of denial is seen yet again when the evidence emerged of how they both failed to recognise how deeply upsetting it could for S to be separated from her present carers. This upset they blamed on the social worker concerned or the length of the journey. When the child on occasion wished to see the carers she called "Mummy Karen" this was brushed aside or perfunctorily addressed. Even now, in the course of their evidence before me, it was clear that neither of them understood the depth of the problem of attachment which the child has formed with her carers.

EXPERT AND MEDICAL EVIDENCE

A number of experts in the medical field gave evidence before me and I think it is helpful if I outline some salient aspects of their evidence (without going into their evidence in full detail) together with my comments thereon:

a. Dr Connolly is a Consultant Psychiatrist who specialises in dealing with problems of addiction. He examined P2 on 11 January 2001 being aware of a severe alcohol problem in the past. The essence of Dr Connolly's evidence was that in his opinion the chances of P2

continuing to abstain from alcohol were good if the evidence was that he had abstained now for almost three years except for one breach in September 1999. In his view he had now established a pattern of abstinence. He felt that the supports namely AA an alcohol treatment centre in Newry augured well. He also was encouraged by the fact that P2 has a steady relationship with P1. He felt that it was necessary to develop techniques which would include not going into public houses and risking temptation and the development of a strategy to avoid and deal with people who would attempt to persuade him to drink. My concern is that Dr Connolly has not seen P2 put to the stresses and strains which a rehabilitation would inevitably involve. If S is taken away from her present carers, the evidence is clear that she will undergo a grieving process and her behaviour may fundamentally alter the dynamics of family life within the house. I am fearful that neither P1 nor P2 are capable of meeting this scenario. Dr Connolly was obviously not privy to all the background features of which I am aware and he had not formed the conclusion at which I have arrived that P2 is prone to mislead when it suits him.

b. <u>Dr Bownes, MD MRC Psych, Consultant Forensic Psychiatrist.</u>

Dr Bownes had examined both P1 and P2 in August 1999 and again on 30 November 2001. In his earlier interviews with P2 he had concluded that he exhibited some features of borderline and anti-social personality traits. In particular he displayed a tendency to low mood

and anxiety feelings and difficulty coping with stressful situations leading to frustration and tension which brought him to commit acts of deliberate self-harm. P2's dependency upon alcohol had intensified difficulties and contributed significantly to the mental health and behavioural problems that had been displayed. Dr Bownes felt that there had been an improvement at this later interview and P2 had demonstrated a number of positive changes since August 1999. In particular he had continued to avoid relapse of alcohol dependency apart from one breach in 1999 and Dr Bownes added that there was no evidence "of him having established a pattern of aggressivity within the relationship with his wife P1." He felt that P2 had been able to develop some insight regarding the nature of the cognitive distortions that he employed to deny or justify both alcohol abuse and violent behaviour. In the evidence before me he said there was no reason why this current stability should not continue in its present form provided that there was sufficient support mechanisms built into the situation. He felt that the present level of support namely AA, Ms BMcK and childcare visitors would not be enough. However Dr Bownes was driven to concede that if P2 was still lying to him about the nature of his previous aggression and domestic violence eg he told Dr Bownes that he had "honestly never been aggressive to P1" and had never slapped or kicked or punched her, then he, Dr Bownes, would have to consider the evidence and the explanation for these lies before coming

to a firm conclusion as to the origin of his denials. He recorded that this veil of denial would make things very difficult. He concluded that if there was consistent denial and refusal to accept these matters in the face of irrefutable evidence, this was a bad prognostic indicator. His approach with P1 was similar. At the second interview she appeared to understand and accept the potentially damaging effects of P2's alcohol dependency problem and she was able to display some evidence of reflective thought regarding her need to develop and engage strategies for anticipating and avoiding any relapse of P2's previous problems. However again he conceded that if she was telling lies and colluding with P2 over denial of the past history it again made matters difficult and was a bad prognostic indicator. In any event he recognised that both parties will continue to have the deficits that have been seen in the past and that in the absence of honesty there is a real risk factor. He asserted that a very high level indeed of support would be required to provide a minimum safety net with the historical problems that had surfaced. In the case of P2 he needed a sponsor, community support, National Health Service alcohol treatment, someone such as NR and also a psychologist. P1 would need a female friend on whom she could rely, professional support to recognise negative mood states such as a general practitioner or counsellor, a female professional with background work in probation services and a professional social worker. Whilst in theory it may well be that all of

these supports could be provided, I consider this highlights two matters. First it crystallises the degree of risk that exists with P1 and P2 in that this extremely high degree of support would be required to provide even a minimum safety net according to Dr Bownes. Secondly, I find absolutely nothing in the history which points to either P1 or P2 having the necessary determination or constancy to avail of these services meaningfully if they were proffered. On the contrary, P2 has illustrated that when anyone seems to take a view that does not coincide with his expectations, he immediately divested himself of that assistance. P1 has also shown herself similarly unavailing of professional help. I find no uplifting thread in the suggestions made by Dr Bownes as to the future of this couple and I am convinced that the chances of P1 or P2 utilising this support to a sufficient agree are remote or non-existent. As Dr Bownes frankly admitted, previous behaviour predicts future behaviour. Nothing in the past persuades me that this very high degree of external support would be utilised by these parents in an acceptable fashion especially in light of the complete failure on both their parts to face up to the past history of violent behaviour by P2. In any event I am not persuaded that either of these parents was frank or honest with Dr Bownes not least because they were clearly dishonest in front of me. This serves to undermine the strength of Dr Bownes' conclusions.

c. <u>Mr Donald Giltinan</u>

Mr Giltinan was a childcare consultant with more than 25 years experience in childcare practice, policy and training. Since 1980 he has been training social workers, lawyers and medical practitioners on issues relating to children who had been separated from their birth families and he has co-authored or edited books on the subject and written articles for professional journals. He was a member of the Child Law Committee that produced the foundation report – "Scotland's Children" – for the Children (Scotland) Act 1995. I think it is important to recognise that the experts to which I have already referred were not experts on parenting and whilst able to provide an assessment of the parents' psychiatric condition, treatability and prognosis, there was a much lesser emphasis on the capacity to parent two young children in the circumstances outlined in this case. I was extremely impressed by the evidence of Mr Giltinan and I consider that he gave his evidence in a measured and considered fashion based as it was on the wealth of experience that he has accumulated. I also consider that his evidence found a firm resonance with other independent material that was put before me. I was convinced not only of the soundness of his views, but they also reflect the gravamen of my own conclusions formed independently of what he had said. When he gave evidence before me he was cross-examined in extenso. Some of the salient issues to emerge were as follows:

(a) S has been living away from her parents since her birth on 29 June 1999. On the day following her birth an Emergency Protection Order was granted because of concerns that the child's father (who was not married to the mother at that time) might remove the baby from hospital.

(b) P1 and P2 have cared for their baby C since birth and have provided her with a good standard of care.

(c) It is crucial to appreciate however that in Mr Giltinan's view (and in my view) it would be unsafe to conclude that because P1 and P2 are successful in parenting one child ie C, they will be successful in parenting S. As Mr Giltinan said:

> "Even with a gradual and carefully orchestrated reintroduction of S, the change in family dynamics that would invariably take place could easily upset the current family equilibrium".

(d) S has had nine separate moves from between the time she was discharged from hospital on 9 July 1999 and being placed with her current carers Mr and Mrs SP on 19 July 2000. Mr Giltinan's view was that this large and highly inappropriate number of moves "shows some insensitivity on the part of the Trust to S's need for a stable care giver with whom she can bond."

It is important to appreciate the scale of the movement that this child has endured up until her placement with her present carers. It has been as follows:

(1) After having been removed from her birth parents, she was placed with a family on 8 July 1999.

(2) Between 3 July 1999 and 9 August 1999 she was placed with different carers whilst the initial family were on holiday.

(3) Between 9 August 1999 and 28 December 1999 she was returned to the original carers.

(4) On 28 December 1999 she was transferred to different carers because the original placement had been short-term.

(f) Between 11 and 13 February 2000 she was placed with yet another family to give her current carers some respite.

(g) Between 20 and 26 April 2000 she was again transferred to another family to give respite to her then current carers.

(h) Between 26 April and 19 July 2000 she was returned to those carers. This proved to be another short term placement because the outcome with the child was so uncertain and they simply could not learn to live with the uncertainty. They wished the child to be removed before deep attachments had been formed.

(i) On 19 July 2000 S moved to Mr and Mrs SP her current carers and has remained there ever since. It is important to pause at this stage and recognise the crucial significance of this background in this child's life. Mr Giltinan emphasised the

importance to me of attachment in a young child's life. From when they are born children develop and initiate behaviour based on the trust and relationship they form with their parents or primary carers and they will engage in behaviour to elicit the response that will protect them and let them remain secure in childhood. A great deal of research has gone into this in recent years and there is a gathering concern about the insecurity occasioned by multiple placements of children. If children do not have the opportunity to develop close attachment to significant adults in life it can be extremely damaging for them not only in their childhood but even into their adult years. Damaged children can end up failing to have the capacity to form attachments for the rest of their lives. I have no doubt that the potential for danger caused by so many placements in this child's life is enormous. Since being with her current carers Mr and Mrs SP in July 2000 she has become very settled. Her primary attachments are inevitably with these carers. It was the view of Mr Giltinan and a number of extremely experienced social workers who gave evidence before me including LA, MD and RB that the consequences of another breakdown for this child could potentially be devastating. Ms LA, a professionally qualified social worker employed by the Trust who has had a great deal of contact with the parents and the child S,

emphasised that whilst the foster carers have been extremely cooperative and responsible people who are more than willing to assist in whatever way they can, they are nonetheless a relatively young couple in their thirties. If S was returned to her birth parents for a trial period, they might then proceed to adopt another child and be unavailable for S in the event of a breakdown. The dangers of S then being transferred to yet further strangers is in my view too perilous to contemplate. Moreover as both Mr Giltinan and the social workers I have mentioned underline, even if the child was taken away from her present carers, returned to her birth parents and then, in the event of a breakdown, given back into the care of Mr and Mrs SP she would be a different child. Having suffered the further insecurity of losing Mr and Mrs SP, she would be extremely distrustful and insecure and would have difficulty in forming a further relationship with them. I was very struck by the evidence of the social worker LA who I consider gave her evidence in a very thoughtful and considered fashion. She has observed that S has clearly formed attachments to Mr and Mrs SP and evidences distress when away from the primary carers for any length of time. There was much analysis in this case of the reaction of S to P1 and P2 during the course of contact. The thrust of the Trust case was that since about August 2001 the

child has been increasingly unsettled when attending contact. There are however notes of a number instances when the contrary has obtained and the child has been perfectly happy to meet P1 and P2. I have gone over the very large number of contact visit notes in some detail and I have formed the view that LA was correct in coming to the conclusion that there has been something of a perceptible change in the number of occasions when the child has been unsettled leaving her birth parents and as LA shrewdly pointed out, this thread has been discernible for somewhat longer than one would have expected even in the case of a child who is liable to change her moods. Her reluctance appears to be increasing to some extent and it is getting to the point were LA manifested some positive concern. I agree with Dr Giltinan's conclusion shared by LA, that this may well manifest a child becoming anxious about repeated moves and beginning to wonder if she is about to be permanently moved again. Dr Giltinan describes this as a primitive state of reasoning in a child so young but she may well be beginning to have other interpretations of what is happening. The ghosts of past insecurity may not be lying quiet in this child. LA has witnessed a new-found confidence with her present carers and I am anxious to ensure that nothing should be done to erode that notwithstanding the earnest

endeavours of P1 and P2. I listened carefully to the evidence of Mrs R, who is a further social worker with a Family Placement Team and who has specialised in adoptions since 1989. She also shared the view that this child is aware that moves are afoot and she has observed that the child does not want either foster carer to be far from her. In particular she wants to ensure that the two of them are there. I am convinced that any potential increase in this child's insecurity must be avoided unless there are the most compelling of reasons to justify it.

d. Margaret

Although she did not give evidence before me, I read her report of 20 August 2000. This witness was a medical social worker and has since 1993 worked in the Child Care Consultation Team at Great Ormond Street Hospital for Children which is a multidisciplinary team undertaking assessment and expert reports for courts. She assessed the capacity of P1 and P2 to make the substantial changes required for appropriate parenting of C and S. Her report drew my attention to research findings about rehabilitation which emphasised the need for compliance with professionals, acceptance of the problem and taking responsibility for it. She found, as I did, that both P1 and P2 were still in very considerable denial about past history.

> "There was little evidence of the pain that is evinced by people who are confronting what they have done and how others have suffered."

Ms was also of the view that S had suffered emotional harm from being in an impermanent situation whilst assessments of P1 and P2 had taken place.

THE EVIDENCE OF P1 AND P2

I have already referred to some of the evidence of P1 and P2. It may be helpful at this stage, having read their statements on a number of occasions and having heard their evidence to crystallise some points they have made or which were made on their behalf by Ms Dinsmore QC.

a. Donald Giltinan had conceded that fairness dictated they should be given another chance. Both P1 and P2 stressed to me how much they wanted S to be given to them.

b. They felt that inadequate attention had been paid to the care that they had bestowed on C since her birth on 9 August 2001, the child having resided with them virtually since birth. It was common case they had provided adequate parenting for this child.

c. As late as 2001 certain social workers including Ms C has still felt that rehabilitation for S was on the cards. They felt they had exhibited sufficient determination and stability to merit this. In particular P2 pointed to his abstinence and appreciation of the error of his previous behaviour. P1 asserted that she was now stronger and would leave P2 if he strayed again into his previous behaviour.

d. They felt that the Trust had not sufficiently taken into account the changed circumstances and had relied too much on historical information.

e. They felt that there had been inordinate delay on the part of the Trust and that this had occasioned the growth in attachment of the child S to her current carers.

f. The Trust, it was argued, had exhibited their insensitivity to the needs of the parents and the spirit of fairness by reducing contact from three times per week to once per week in June 2000 notwithstanding that reunification was still under review as they were awaiting the report of Margaret . They challenged the reasoning of the Trust which included a wish to curtail travelling time. They evidenced the failure of the Trust to provide them with overnight contact with S and in particular the refusal to allow S to return to their house on her own birthday notwithstanding they had allowed her to participate in the first birthday of C.

g. They criticised the Trust assessment of the upset of S at contact arguing that an equally strong argument could be made that S was simply exhibiting a normal child's variation in mood. They pointed to the numerous examples in bundle 6 where contact had clearly been to the child's evident liking as opposed to those instances where the child had been upset.

I shall deal with these points as they arise later in the judgment. It is appropriate at this juncture that I consider a further submission by Ms Dinsmore QC on behalf of P1 and P2. There is no doubt that certain of the evidence upon which the Trust relied in this case was hearsay evidence particularly in the context of the allegations of domestic violence. Obvious examples of these were the evidence of Mr S the Pastor and his wife, P3 and his sister, the medical evidence on the injuries to the two children who had been the subject of assault by P2, and the reports from social workers as to the allegations of domestic violence by P2 on his previous partners. In addition there were Social Services reports and care plans prepared by social workers MH, CW and McCM. The Trust called in aid the Children (Admissibility of Hearsay Evidence) Order (Northern Ireland) 1996. In essence this order states that in civil proceedings before the High Court and in Family Proceedings evidence given in connection with the upbringing, maintenance or welfare of a child will be admissible notwithstanding any rule of law relating to hearsay. A party to proceedings relating to a child no longer has the right to challenge the admissibility of evidence connected with the child on the ground that it is hearsay. However the courts will have to assess the weight which may attach to such evidence. In Re W (Minors) (Wardship: Evidence) Neill LJ observed:

> "… Hearsay evidence is admissible as a matter of law, but … this evidence and the use to which it is put has to be handled with the greatest care and in such a way that, unless the interests of the child make it necessary, the rules of natural justice and the rights of the parents are fully and properly observed."

Even in cases where the Civil Evidence (Northern Ireland) Order 1997 does not strictly apply, when assessing the weight to be attached to hearsay evidence, I believe that a court may have regard to the matters set out in Article 5(3) of that Order which include:

(a) Whether it would have been reasonable and practicable for the party by whom the evidence was adduced to produce the maker of the original statement as a witness.

(b) Whether the original statement was made contemporaneously with the occurrence or existence of the matter stated.

(c) Whether the evidence involves multiple hearsay.

(d) Whether any person involved had any motive to conceal or misrepresent matters.

(e) Whether the original statement was an edited account or was made in collaboration with another or for a particular purpose.

(f) Whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Ms Dinsmore argued that the purpose of the 1996 Order was to assist the court in receiving the evidence of children without their being present in court to give evidence and that this should not necessarily be afforded to the evidence of an adult. I am not persuaded that the evidence admitted by the 1996 Order is confined to evidence of what a child has said. The evidence may record or report the previous statement of any person, and applies to any

person. The evidence which may be admitted under this order is not confined even to first hand hearsay evidence, and allows second, third or remoter hearsay evidence to be given. However the further the evidence is from the original source of the statement, the less weight the court is likely to attach to it. The proposed evidence however must show a substantial connection with the upbringing, maintenance or welfare of the child and where the proceedings primarily affect the parents, but not the children, it is probable that hearsay evidence will not be admissible by virtue of the order.

I am absolutely satisfied that the evidence mentioned above in this case does relate to the upbringing, maintenance and welfare of S and that evidence of domestic violence clearly impacts upon this child and her welfare. The medical evidence in relation to the children assaulted by P2 I accept without reservation given the conviction of P2 and the fact that this evidence was acted upon by the court. I have also indicated that I believe the evidence of Mr S and his wife even though they were not there to give evidence. I have already outlined my reasons for so doing and reiterate that I could find no motivation for Mr S to have lied or fabricated the evidence as suggested by P2 and the fact that P2 called upon him within days of him having made these allegations for the purposes of conducting prayers persuades me that P2 did not believe they were fabricated. I also had the advantage of watching P1 and P2 and their demeanour when dealing with these allegations. I found them totally unconvincing and I was satisfied that their denials were untruthful. The allegations of domestic violence by the partners of P2 were of course at a

further remove but P2 has conceded to a number of professionals that he did engage in physical violence albeit he diminished the impact of that in front of me by alleging it was only pushing and shoving. I have again set out the reasons earlier in this judgment why I accepted that evidence largely based on the disparate and unconnected nature of it, the admissions of P2 to me and to other professionals who interviewed him about these allegations and the fact that they fit a pattern of violence which has emerged in disparate parts of this case.

I recognise that the more serious the allegation is hence the stronger should be the evidence before the court to conclude that the allegation is established on the balance of probability. As Lord Nicholls said in Re H and R (Child Sex Abuse: Standard of Proof) (1996) 1 FLR 80 HL at page 26:

> "Built into the preponderance of probability standard is a serious degree of flexibility in respect of the seriousness of the allegation".

Two recent first instance cases in England namely Re W (a child) (Sexual Abuse) heard on 14 January 2002 in the Family Division in England by Holman J cited as BLD 16010264 and Re W (a child) (Disputed Evidence: Appeal) in the Family Division before Sumner J cited as BLD 15010245 emphasised the need to hear evidence of such matters, to make a very full analysis of it, to recognise the seriousness of the allegations in light of the impact it may have upon any future conduct between the parents and the child and to ensure that any conclusion is fully justified based on sound

evidence. I am completely satisfied on the balance of probabilities in this case, that these serious allegations of domestic violence have been proven to the necessary standard in light of the anxious consideration that I have given to them. I consider the evidence of them to have been cogent and compelling and that the manner in which P2 and indeed P1 gave evidence about them has only served to further my conviction that they are true.

I have not taken into account the suggestion by the Trust that P2 entered a public house in September 2001 or was perhaps under the influence of drink when social workers called at his house. No attempt was made to furnish me with the source of that allegation and in any event even if it had been given the facts were so circumstantial as to render it worthless. It was open to the Trust to have obtained a blood alcohol reading at this time and they chose not to do so. I therefore reject this allegation in toto.

I pause at this stage to make some further observations about the importance of domestic violence in a case such as this where an application to discharge a Care Order is being made and where there is also an application to free a child for adoption. The Guardian ad litem reminded me that domestic violence by one spouse against another spouse carries enormous risks for a child even where that child is not directly abused. The literature on the subject according to the guardian illustrates that a child suffers both emotionally and physically if the child witnesses or hears violence. Children pick up the tell-tale signs and it leads to an inconsistency of care. Long-term it affects children's emotional development and relationships with others.

Abused children can become themselves abusers and they often resume the very pattern that they had hoped to avoid. She expressed grave concern in this context that P1 and P2 were unable to admit the extent of the violence that had occurred between them and she felt this increased the risk of it occurring again. It was her experience that unless people were prepared to face up to their violent past they would suffer great difficulty dealing with it and developing strategies to meet it. I dealt with this problem in Re DJ and D (Freeing Order) Unreported 25 September 2001 where I said:

> "Once the court has found proved violence which is significant and relevant to the disposal of the case the court must not only consider the effects of the violence on the child, but should also consider the response of the perpetrator of the violence. Violence to a partner involves a significant failure in parenting. It represents both a failure to protect the child's care and a failure to protect the child emotionally."

I am profoundly concerned by the background of domestic violence in this case exhibited by P2 and suffered by P1 and others. The possible impact that a recurrence would have on S is a very important factor in my consideration especially in light of her unsettled past. The danger of exposing S to the kind of behaviour in which P2 has so recklessly engaged in the past is a risk that I am simply not prepared to take when I consider the best interests of this child.

CONCLUSIONS

1. I shall deal initially with the application by each parent to discharge the Care Order made in respect of S. In deciding the application, I

must invoke the principle of the paramountcy of the child's welfare and have regard to the matters in the statutory checklist contained in Article 3(3) of the 1995 Order. The burden of showing that the welfare of the child requires revocation of the order is on the person applying for the discharge (see Re MD & TD (Minors) (No 2) (1994) Fam Law 489). In considering any harm which the child has suffered or is at risk of suffering, the risk to be considered will normally focus on recent harm and an appraisal of current risk.

2. I have come to the conclusion that the parents in this case have failed to discharge the burden of showing that the welfare of the child requires revocation of that order. I consider that the paramountcy of this child's welfare requires a continuation of the Care Order. I have had regard to the matters on the statutory checklist before coming to this decision. My reasons for so concluding are as follows:-

(a) In light of all the factual findings that I have made I have no doubt that the paramountcy of this child's welfare requires the continuation of the Care Order.

(b) Applying the welfare checklist I have concluded:

a. The child is too young to ascertain her views, wishes or feelings. However I have already recorded in my findings that I have been persuaded by the evidence of Mr Giltinan and other social work evidence that this child may well be currently manifesting unease and indeed

concern at current contact arrangements in light of her disrupted past.

b. S's basic emotional needs are in common with those of a child her age. As the Guardian ad litem has said "she needs consistency of care in a stable and nurturing environment in which she feels loved and valued." Crucially in this case the child has already experienced far too many changes of carers to date having had nine placement moves within her first year. I observe in the report of Margaret that this already may have occasioned the child emotional harm from being in these impermanent situations. She is clearly now blossoming in the care of her present foster carers Mr and Mrs SP and presents as an extremely happy child. As I have already indicated in this judgment I am persuaded that any further breakdown in the attachments which this child has now formed may potentially be irremediable and could have profound permanent consequences for her emotional development and her ability to form lasting healthy attachments for the future. I share entirely the view of Mr Giltinan that this court should not embark upon a process that would make S "a hostage of circumstances" and that exposing this child to further

risk in the uncertain circumstances that now surround P1 and P2 would not only be unwise and dangerous but would clearly not be in the interests of the welfare of this child. This court is simply not prepared to experiment with this child's future by placing confidence in such inconstant parents.

(c) It would be clear from what I have said that I consider that the likely effect on S of any change in her circumstances would grossly disrupt her present attachments. Whatever may be the theoretical possibilities, I am not persuaded that in the circumstances of this case, an attempt can be successfully made to transfer her primary attachments from her carers to her birth parents without profound risks that I consider would be to her detriment. If she was now to be placed with her parents and that placement was then to break down, the danger is that her foster parents might no longer be available and even if they were available, as Dr Giltinan has said, the child would already be further damaged and insecure.

(d) I have considered the child's age, sex, background and any characteristics which I consider relevant. The relevant background here is that the child has had a large number of placements in the past. I am satisfied that these placements were dictated by circumstances and do not arise from any

failure on the part of the Trust to address pertinent issues with this child. One must remember that had it not been for the inconstancy and unreliability historically of the birth parents, these moves would never have been required. As I have indicated already in my judgment, this child's background is fundamentally different from that of C and no analogy can be drawn between their developments either in terms of their background or the parenting which they have been given.

(e) Is there any harm which S has suffered or is at risk of suffering? I have already dilated at some length in the course of this judgment as to the harm which this child is at risk of suffering. The Guardian ad litem has ventured a suggestion that the emotional damage to S would be immeasurable if a placement with the parents broke down. Having listened to all the evidence I consider that she has appropriately assessed the risk in these terms. Ms feels she has already suffered emotional harm. I must ensure as far as I can that the cycle of harm is broken.

(f) How capable of meeting her needs is each of her parents and any other person in relation to whom the court considers the question to be relevant? At the risk of making this judgment replete with criticisms of P1 and P2 in light of what I have already said in my findings, I am driven to conclude that the

unstable dynamics which have fuelled the maladaptive behaviour of both P1 and P2 in the past are not yet spent. I have considered each of them individually and also accumulatively and I cannot escape the conclusion that neither is capable of meeting the needs of this child. Domestic violence in particular is an extremely serious matter in the context of a child so young and the veil of denial behind which P1 and P2 have sought to conceal the extent of this violence persuades me that neither of them is yet ready to meet the enormous challenge which rehabilitation with this child would present. The risk of this violence recurring is so manifest that I am not prepared to expose this child to it. P1 and P2 have tried to sedate with misleading information too many of the professionals who have engaged them and, where their usefulness proved illusory in his eyes P2 has then chosen to abandon such help. I found both of them singularly unconvincing. Both were prepared to tailor their evidence according to what they deem to be in their own best interest and not that of S. I conclude that P1 is not yet attuned to prioritising the needs of her children, and S in particular, over P2. I observed her in the witness box on numerous occasions mentally struggling to protect P2 when clearly she was aware that there was substance to the allegations of violence made against him. Her evident discomfort in so

doing however did not prevail and she remained wedded to the notion of protecting him. Her failure to face up to his behaviour in the past reflects not only his continued domination over her but sadly convinces me that she still does not appreciate the dangers that his behaviour would present to this child. In short the complete lack of insight of either of these parties into the needs of this child fatally flaws their capacity to meet her needs. My fear is that as the stresses and strains of the inevitable grieving process which S would undergo if taken away from her present carers mounted, P1 and P2 would find themselves incapable of understanding or dealing with them. The result of this, based on their historical behaviour, could be that the child is caught up in a maelstrom of domestic violence and alcohol abuse and perhaps even emotional or physical abandonment. It is in this context, inter alia, that I have concluded that intervention in this matter by way of a Care Order remains a proportionate response to the dangers confronting this child and the overriding necessity of the interests of this child justify maintaining such an order in place.

(g) I have considered the range of powers available to me under the 1995 Order. I have considered the possibility of making a Supervision Order or a Residence Order and discharging the Care Order. I recognise that the court should begin with a

preference for the less interventionist approach unless there are cogent reasons to the contrary. I should consider the possibility of at least seeing the effect of a Supervision Order before adopting the more draconian Care Order approach (see Re D (Care or Supervision Order) (1996) (2 FLR 755). In this context I must be mindful that there is to date a successful Supervision Order operating with C. I am satisfied however that the risks to which this child would be exposed if she returned to live with P1 and P2, even if supervised periodically, are sufficiently compelling to justify a continuing Care Order.

The circumstances and background of C are wholly different from that of S. C has been with P1 and P2 since birth and has not had the unacceptable number of placement changes that S has endured. Attachment of C is with her birth parents whereas S has now firm attachment links with her current carers. The risks of breakdown with C are therefore not the same as those associated with S.

I have also looked again at the no order principle. I accept that there must be compelling reasons to override the prima facie right of a child to an upbringing by its natural parents (see Re I (Care – Natural Parents Presumption) (1999) 1 FLR 134). This is particularly so where her other sibling is with those parents. The question is not as to whether Mr and Mrs SP

will provide a better home but rather I must ask if there are compelling factors requiring me to override this right. However for the reasons I have given I am satisfied that I must in this instance override the prima facie right to be with the natural parents.

In approaching these threshold matters, and in coming to the conclusion which I have outlined, I have been guided by the judgment of Lord Nicholls in Re H & R (Child Sexual Views) (HL) (1996) 1 FLR 88 and in particular the well-trodden extracts from his judgment in which he said at page 101a:

> "I must now put this into perspective by noting, and emphasising the width of the range of facts which may be relevant when the court is considering the threshold conditions. The range of facts which may properly be taken into account is infinite. Facts include the history of members of the family, the state of relationships within a family, proposed changes within the membership of the family, parental attitudes, and omissions which might not reasonably have been expected just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and unsatisfactory parental responses to complaints or allegations. Facts, which are minor or even trivial if considered in isolation, when taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on a crucial issue."

I have concluded that there are more than sufficient facts proven in this case to show a likelihood that this child will suffer severe harm in the future if she is placed in the care of her parents. I have concluded that the evidence

does establish a combination of profoundly worrying features affecting the care of the child within the family and accordingly I have concluded that the parents have failed to discharge the burden cast upon them to have this Care Order discharged.

AN APPLICATION TO FREE FOR ADOPTION WITHOUT CONSENT

Having concluded that it is appropriate to maintain the Care Order, I now turn to apply the factual findings which I have made to the application by the Trust to free S for adoption without consent. My conclusions are as follows:

1. I have been satisfied as to the preconditions necessary for the granting of an application under Article 18 of the 1987 Order namely that the child is in care of the Trust pursuant to a Care Order and, having heard the evidence of the social workers with reference to the current foster carers, I am satisfied that if freed for adoption it is likely that this child will be placed for adoption. In deciding on the course of action in relation to this application, I have had regard to the welfare of the child as the most important consideration. In addition I have had regard to all the circumstances with full consideration being given to:

   (1) The need to be satisfied that adoption would be in the best interests of the child; and

   (2) The need to safeguard and promote the welfare of the child throughout her childhood; and

(3) The importance of providing the child with a stable and harmonious home.

It has not been practicable to ascertain the wishes and feelings of the child regarding the decision having regard to her age and understanding. My conclusion that adoption is in the best interests of this child is founded essentially on the factual conclusions that I have already made. I do not consider the rehabilitation of the child with their parents is either possible or feasible within a timescale that can prevent substantial damage accruing to this child. I do not believe that either of her parents is sufficiently attuned to changing their lifestyle on a permanent basis so as to ensure the security, stability and safety of this child. It would be wearisome in this context for me to repeat the reasons I have outlined at length earlier in this judgment and it suffices to say at this stage that the inconsistency of the parents in the past, the failure to properly address issues of domestic violence and indeed alcohol abuse on the part of P2, the failure of P1 to afford sufficient protection against the dangers of P2's behaviour, the historical failure of both P1 and P2 to act appropriately towards the other children in their lives and the immeasurable damage which could be occasioned to this child by breaking her present attachments in the wake of a failed rehabilitation with P1 and P2 have all served to persuade me that adoption is in the best interests of this child. Apart from rehabilitation with her parents I have also considered whether or not adoption or long-term foster care is better in this instance. Mr Toner QC on behalf of the Trust properly drew my attention to the observations of

Thorpe LJ in Re D (Grant of Care Order: Refusing of Freeing Order) (2001) 1 FLR 863 where he underlines that "The child's timescales in these cases is crucial". The courts in this jurisdiction have dealt with the issue of long-term foster care as opposed to adoption in a number of cases and I have revisited again:

a. MacDermott LJ in Re JL (1993) NF-MACE 1729.

b. MacDermott LJ in Re KLA (2000) (NI 234).

c. The Court of Appeal in Northern Ireland in Re C & L (Unreported) 8 February 2000 (NICE3145).

d. Higgins J in Re S (2000/5F) (HIGF3289).

e. My own decision in Re DJ & D (Freeing Order) (Unreported 25 September 2001).

In this area of childcare, the results of decided cases are very often fact sensitive. Precedent is a valuable stabilising influence in our legal system, but comparing the facts and outcomes of cases in this area of law can conceivably lead to a misuse of the only proper use of precedent viz to identify the relevant principles to apply to the facts as found. In this case I am persuaded that the arguments in favour of adoption mounted inter alia by the Guardian ad litem and Mr Giltinan are decisive. The Guardian records at paragraph 11.13 of her latest report:

> "Research indicates that children who are adopted do considerably better than children who remain in the care system. They derive a greater sense of security from their adoptive status than children who remain in foster care and adoption also

> obviates the necessity of continued involvement of statutory agencies in the child's life."

The Guardian goes on to observe at paragraph 11.15:

> "Research also indicates that the younger the child when placed for adoption the greater the opportunity for forming healthy and lasting attachments. It is noted that if the Freeing Application succeeds S will remain with her current carers with whom evidence would indicate she has already formed secure attachments."

I share these views and I conclude therefore that adoption is in this child's best interests. None of the arguments for long-tem foster care are sufficiently strong in this case given the tender years of S and her need for permanence and security within an appropriate timescale.

Are P1 and P2 withholding consent unreasonably?

Under Article 16 of the 1987 Order, an Adoption Order shall not be made in the case of each parent or guardian of the child unless the court is satisfied that:

a. He freely and with full understanding of what is involved agrees –

(aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and

(ab) either unconditionally or subject only to a condition with respect to the religious persuasion which the child has to be brought up,

to the making of an Adoption Order; or

b. His agreement to the making of the Adoption Order should be dispensed with on a ground specified in paragraph (2).

The Trust submitted in this case that both the mother and father are withholding their consent unreasonably and that I should dispense with their agreement.

The principles governing this area of law have been set out in a number of cases and in particular by myself in Re DJ & D (Freeing Order) (Supra). For ease of reference I shall briefly set out the principles:

(a) Re W (an infant) (1971) AC 682 is a leading authority on the matter and emphasises that the test is reasonableness and nothing else.

(b) It is clear that Article 9 does not apply to the court when considering whether or not to dispense with the parental agreement.

(c) Re C (a minor) (Adoption: Parental Agreement; Contact) (1993) 2 FLR 260 and Re F (Adoption: Freeing Order) (2000) 2 FLR 505 exhort the court to approach the matter by the Judge asking himself whether, having regard to the evidence and applying the current values of our society the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent. This reflects what the author of Hershman and McFarlane, Children Law in Practice Section H at paragraph 127 describes thus:-

> "The discernible move within the decisions of the appellate courts towards greater emphasis on the welfare of the child is a factor in decisions relating to the parents reasonableness."

I have no doubt that the welfare of the child is an important factor which the reasonable parent will take into account, but I observe the

cautionary note sounded in Re H and Re W (Adoption: Parental Agreement) (1983) 4 FLR 614 at 624 that short of amending legislation for further consideration in the House of Lords there must be a limit to the shift.

(d) I consider that a court is well guided if it follows the component parts of the test set out in Re W (Supra) and I have done so in the following manner:

(1) I have considered the reasonableness of the mother and father's refusal to consent as judged at the date of the hearing.

(2) I have taken account of all the circumstances of the case and the factual findings that I have made above. I have borne in mind what Thorpe LJ said in Re D (Grant of Care: Refusal of Freeing Order) (2001) 1 FLR 862 at 869 where he observed:

> "Of course in an uncertain world almost anything can be said to be possible, but in evaluating the hypothetical reasonable parent test and in applying it, it is not open to a judge to give prominence to theoretical possibility unless the possibility has a quantifiable and realistic content. It is simply irrelevant to the judicial exercise. I simply cannot see any basis for the evaluation of either possibility other than an evaluation of the past performance. As in most aspects of predictability the past is the surest guide to the future."

I consider that the reasonable parent in this case would recognise the dangers that arise from the past and would conclude that the changes that have been made are too tenuous and untested to justify

withholding consent particularly in light of the patent failure to face up to the full content and consequences of past behaviour. I do not intend to repeat all the factors that I have set out above, but I am certain that a reasonable parent, recognising the factual findings that I have made, would not withhold consent on any reasonable basis. I must address at this point the argument advanced by Ms. Dinsmore on behalf of P1 and P2 that they harbour a sense of grievance or injustice. The Court of Appeal in Re E (Minors) (Adoption: Parents Consent) (1990) 2 FLR 397 has made it clear that one must distinguish between the sense of injustice, which is irrelevant, and the facts which give rise to the sense of injustice. Where there are grounds for a parent to have a sense of grievance, that factor has to be weighed alongside the other circumstances of the case and in particular the welfare of the child and the advantages of adoption. I am unpersuaded that these parents have any reasonable grounds to have a sense of grievance. I recognise that Mr Giltinan did concede that in his view "if a judgment was to made on the ground of what would be fair, I have no doubt that P2 would be given another chance". I have to say immediately that I do not share the view of Mr Giltinan. P1 and P2 have been given numerous opportunities in the past to demonstrate their parenting capacity. Even now, when afforded another opportunity in the evidence before me, they have been deliberately untruthful in a number of salient areas and have demonstrated a complete failure to face up to the dangers of their

past or to persuade me that the ghosts of domestic violence past now lie quiet. Even had I been persuaded that Mr Giltinan was correct to make that concession the fact of the matter is that the welfare of the child and the advantages of adoption must be weighed alongside any such unfairness. In my view the welfare of the child and the advantages of adoption far outweigh any unfairness that has surfaced in this case. In my view the Trust in this case may have tarried too long in affording patient indulgence to P1 and P2 to demonstrate their ability to rehabilitate S. The Trust was badly misled by P1 and P2 about their behaviour in September 1999. Even then, in order to ensure that fairness was the watch word, they sought the independent advice of Margaret in August 2000, a report of which was fundamentally unavailing to the parents and supported the Trust view. I have concluded that the Trust have made a realistic appraisal of the assertions of change made by these parents and they have approached the reports of Dr Connolly, Dr Bownes and Mr Robinson on an informed and considered basis. It may be that the Trust delayed too long before taking the final steps to issue these proceedings but I believe this was borne entirely out a desire by the Trust to leave no stone unturned before finally setting its face against rehabilitation. It seems to me that had they made this application in August 2000 after they received Margaret 's report, the case would even have been stronger than it is now some time later. I reject entirely the

submissions made by Ms Dinsmore QC that the reduction of contact, moving of contact away from the natural parents' home, the refusal to permit overnight contact, or the concerns expressed about the child's evident upset at certain contact meetings have reasonably fuelled a sense of grievance. On the contrary, I am satisfied that these were all considered and appropriate decisions taken dispassionately entirely in the interests of this child and well within the ambit of the discretion vested in any Trust. One must bear in mind that as Mr Toner has properly pointed out, it was always within the power of P1 and P2 to launch an application to discharge the Care Order whereas in fact they did not do this until 19 March 2001 notwithstanding the current foster carers having taken the child into their care in July 2000.

(e) I have applied an objective test in this case. I have dispassionately assessed whether or not a reasonable mother and a reasonable father in the position of P1 and P2 could withhold consent and for the reasons I have stated above I do not believe that they could.

(f) I have applied a test of reasonableness and nothing else.

(g) I have been wary not to substitute my own views for that of the reasonable parent in this context.

(h) I recognise that there is a band of differing decisions, each of which may be reasonable in the given case. I do not consider that the approach of P1 and P2 in this case is a reasonable approach.

(i) I am satisfied that P1 and P2 have been given an opportunity of making, if they so wish, a declaration that they preferred not to be involved in future questions regarding the adoption of this child.

Finally in this context, I have been mindful of the Human Rights Act and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Under Article 8 of the Convention both the child and the parents have the right to respect for their family and private life. For the state to interfere with that there are three requirements. First, that it be in accordance with the law, secondly, that it be for a legitimate aim (in this case the protection of the welfare and interests of the child) and thirdly that "it is necessary in a democratic society". (See Re C & B (Children) (Care Order: Future Harm (2000) 2 FCR 614 at 625. Proportionality is the key. I must ensure that any order I make is proportionate as a response to the risk presented. I am satisfied that Article 8 does not entitle P1 and P2 to have such measures taken as would harm the child's health and development. I adopt the approach taken by Hale LJ in Re W & B; Re W (2001) UK HRR 9228 where she said at paragraph 55:

> "In my view there is another way in which a public authority may act incompatibly with the Convention rights in a care case. This is by failing to take adequate steps to secure for a child who has been deprived of a life with his family at birth, a life for the new family who can become his new family for life to make up for what he has lost … … the notion can be readily inferred from the concept of positive obligations inherent in Article 8."

Whilst this was spoken in the context of a care application nonetheless I think it has relevance in all applications touching upon the future of children. I am satisfied therefore that the order I am making freeing this child for adoption is a wholly proportionate response to the circumstances of this case given the factual conclusions I have made and that the advantages of adoption for S's welfare override the views of P1 and P2. I therefore make an order freeing this child for adoption.

CONTACT

I am satisfied that the effect of the orders I have made to free this child for adoption effectively extinguishes the Care Order. I dismiss the parents' claim under Article 53(2) of the 1995 Order. The Freeing Order would have permitted the court to make Contact Orders under Article 10 of the Children (Northern Ireland) Order 1995 if the court is so minded. I do not consider it appropriate to make such an order in this case. I am satisfied there is need to afford the Trust a flexibility in approach without immediate recourse to the court. The Guardian ad litem has shrewdly assessed the situation when she concludes:

> "Given P1 and P2's opposition to the proposed plan for S it would be difficult at this stage to be optimistic regarding a mutually acceptable agreement which would encompass the wishes and feelings of birth parents and current carers. However given the prospective adopters express commitment to remaining open to the idea of having a degree of contact, it is my view that there would be merit in the Trust continuing to mediate

> and offer a significant level of support and guidance with a view to negotiating the possibility of direct face to face contact on an infrequent basis."

It is the Trust plan to reduce parental contact by phases from the present once per week to once per month which is to take place in a neutral venue and be supervised by the Trust. The contact will be activity based and will include inter-sibling contact with C. Much of course will depend on how responsibly the parents react to this order and the Trust will require the flexibility to which I have referred in order to consider whether direct parental contact on this reduced basis is appropriate. Such issues as whether or not the parents are seeking to undermine S's placement will be a relevant issue in this context. Accordingly whilst I consider that the no order principle should operate in this area of contact nonetheless I express the view that the Trust approach seems to me to be thoroughly sensible although it will depend on the circumstances as they unfold. I have no doubt that inter-sibling contact with C and A should be facilitated. I recognise that sibling relationships can have an intrinsic value for the children who are placed away from home with alternative carers. Again I feel that the Trust should exercise its own discretion in setting up inter-sibling contact between S and both C and A on a direct basis.

I pause to make one further observation directed to P1 and P2. I recognise that this judgment will not accord with their strongly held wishes. I trust however that they will adjust to it and recognise that the child C is still with them under supervision from the Trust. They must continue to address

the issues that I have raised in this case so as to ensure that this child remains with them and is never confronted by the past history that has so bedevilled them.

THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

_____

IN THE MATTER OF S (FREEING FOR ADOPTION: ADMISSIBILITY OF HEARSAY RULE: DOMESTIC VIOLENCE)

_____

J U D G M E N T O F

GILLEN J

_____